

CDM-Com 12

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
ALBANY AVENUE PARTNERS LLC,

Plaintiff,

-against-

769 M LLC, CRIMINAL COURT OF THE CITY OF NEW YORK, NEW YORK CITY ENVIRONMENTAL CONTROL BOARD, DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT, JOSEPH FREUND, 299 VAN BUREN INVESTORS LLC,

"JOHN DOE #1" through "JOHN DOE #12," the last twelve names being fictitious and unknown to plaintiff, the persons or parties intended being the tenants, occupants, persons or corporations, if any, having or claiming an interest in or lien upon the premises, described in the complaint,

Defendants.

-----X

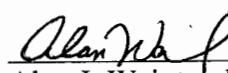
NOV 6 19 PLLC:18
MOTION SUPPORT OFFICE

PLEASE TAKE NOTICE that the within order will be presented to the Hon. Larry D.

Martin at the Kings County Supreme Court, 360 Adams Street, Brooklyn, New York at the Comm.

12 on November 14, 2019 at 9:30 A.M. for settlement and signature.

Dated: October 30, 2019
Kew Gardens, New York



Alan J. Waintraub, Esq.
Law Offices of Alan J. Waintraub PLLC
Attorneys for Plaintiff
125-10 Queens Blvd., Suite 311
Kew Gardens, New York 11415
(718) 504-5700

TO:
769 M LLC
Defendant
c/o Secretary of State
99 Washington Avenue
Albany, New York 12231

Law Office of Jeffrey Fleischmann PC
Attorneys for Defendant – Joseph Freund
150 Broadway, Suite 900
New York, New York 10038
Attn: Jeffrey Fleischmann, Esq.

Criminal Court of the City of New York
Defendant
25 Beaver Street
11th Floor
New York, New York 10004

New York City Environmental Control Board
Defendant
100 Church Street
4th Floor
New York, New York 10007

Department of Housing Preservation and Development
Defendant
100 Gold Street
5th Floor
New York, New York 10038

299 Van Buren Investors LLC
Defendant
c/o Harvard Business Services, Inc.
16192 Coastal Highway
Lewis, Delaware 19958

At IAS Part Comm 12 of the Supreme Court of the State of New York held in and for the County of Kings at the Courthouse thereof on the 23rd day of Jan, 2019.

PRESENT:

Honorable

Larry D. Martin

J.S.C.

-X-

ALBANY AVENUE PARTNERS LLC,

INDEX NO. 517734/2018

Plaintiff,

- against -

769 M LLC, CRIMINAL COURT OF THE CITY OF NEW YORK, NEW YORK CITY ENVIRONMENTAL CONTROL BOARD, DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT, JOSEPH FREUND, 299 VAN BUREN INVESTORS LLC,

**ORDER FOR
SUMMARY JUDGMENT
AND APPOINTING A
REFEREE**

"JOHN DOE #1" through "JOHN DOE #12," the last twelve names being fictitious and unknown to plaintiff, the persons or parties intended being the tenants, occupants, persons or corporations, if any, having or claiming an interest in or lien upon the premises, described in the complaint,

Defendants.

-X-

UPON review of the summons, verified complaint and notice of pendency of action filed in this action on August 30, 2018, and upon the affirmation of Alan J. Waintraub, Esq. of the Law Offices of Alan J. Waintraub PLLC, counsel for Albany Avenue Partners LLC, from which it appears that this action was brought to foreclose a certain commercial mortgage on real property situated in the County of Kings, State of New York, known as Block: 1498; Lot: 54, and by the street address, 769 MacDonough Street, Brooklyn, New York 11233, by reason of certain defaults as alleged in the complaint, and upon the affidavit of Joyce Waintraub, a member of Albany Avenue Partners LLC, sworn to on January 3, 2019, and it further appearing that all

of the defendants have been duly served with a copy of the summons and complaint or have appeared herein, copies of such affidavits of service being annexed hereto, and no answer has been interposed by the defendants though the time to do so has expired; and it appearing that none of the defendants is an infant, incompetent or absentee, or in the military, and that since the filing of the notice of pendency on August 30, 2018, the complaint has not been amended in any manner whatsoever; on the pleadings and papers heretofore filed herein and no one appearing in opposition hereto,

NOW, on the motion of the Law Offices of Alan J Waintraub PLLC, attorneys of record for Plaintiff, it is

ORDERED, that Plaintiff's motion for summary judgment is hereby granted; and it is further

ORDERED, that Freund's Answer with denials, affirmative defenses and counterclaims are hereby stricken; and it is further

ORDERED, that Plaintiff is granted summary judgment as against the general denials, affirmative defenses and counterclaims of Freund, and the same general denials, affirmative defenses and counterclaims are hereby dismissed; and it is further

ORDERED, that this action be, and the same is hereby referred to Stephen Vincent Barbosa, having an office at 26 Court St, Brooklyn NY 11242, telephone number (718) 237-0880, as Referee to ascertain and compute the amount due to the Plaintiff herein for principal, interest, and other disbursements advanced as provided for by statute and in the Note and Mortgage upon which this action was brought, to examine and report whether the mortgaged premises should be sold in one parcel, and that the Referee make his/her report no

later than 60 days of the date of this order and that, except for good cause shown, the Plaintiff shall move for judgment no later than 60 days of the date of the Referee's report; and it is further

ORDERED, that upon submission of the Referee's Report, Plaintiff shall pay \$250.00 to the Referee as compensation for his/her services, which sum may be recouped as a cost of litigation; and it is further

ORDERED, that the referee appointed herein is subject to the requirements of Rule 36.2(c) of the chief Judge, and if the referee is disqualified from receiving an appointment pursuant to the provisions of that Rule, the referee shall notify the Appointing Judge forthwith; and it is further

ORDERED, that by accepting this appointment the Referee certifies that he/she is in compliance with Part 36 of the Rules of the Chief Judge (22 NYCRR Part 36), including, but not limited to, section 36.2 ("Disqualifications from appointment") and section 36.2 (d) ("Limitations on Appointment Based on Compensation"); and it is further

ORDERED, that defendants captioned as "John Doe #1" through "John Doe#12" and the language following, not having been served with copies of the summons and verified complaint, are neither necessary nor proper party defendants and their name(s) are hereby stricken from the caption of this action; and it is further

ORDERED, that the stay issued by the Hon. David B. Vaughan in his order dated May 6, 2019, which the Hon. David B. Vaughan stated in that certain short form order dated July 17, 2019

“may be vacated by Justice Ash at her discretion” is hereby vacated in its entirety; and it is further

ORDERED, that default is found against all non-answering defendants;

ORDERED, that the caption is hereby amended to read as follows:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
ALBANY AVENUE PARTNERS LLC,

INDEX NO. 517734/2018

Plaintiff,

- against -

769 M LLC, CRIMINAL COURT OF THE CITY OF NEW YORK, NEW YORK CITY ENVIRONMENTAL CONTROL BOARD, CITY OF NEW YORK DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT, JOSEPH FREUND, 299 VAN BUREN INVESTORS LLC,

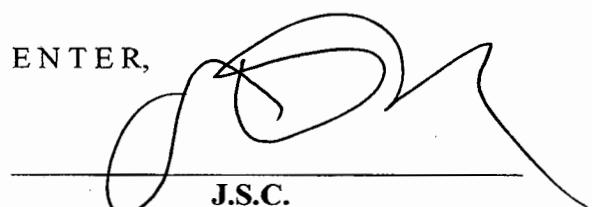
Defendants.

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; and it is further

ORDERED, that a copy of this Order with Notice of Entry shall be served upon the designated Referee, the **owner of equity of redemption**, any **tenants** named in this action and any other party entitled to notice within 20 days of entry and no less than 30 days prior to any hearing before the Referee. The Referee shall not proceed to take evidence as provided herein without proof of such service, which proof must accompany any application for Final Judgment of Foreclosure and Sale.

ENTER,


J.S.C.

HON. LARRY D. MARTIN

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS-----X
ALBANY AVENUE PARTNERS LLC,

INDEX NO. 517734/2018

Plaintiff,

AFFIDAVIT OF
MAILING

- against -

769 M LLC, et al.,

Defendants.

-----X

STATE OF NEW YORK)
COUNTY OF QUEENS)

I, Jennifer Forte, being duly sworn, deposes and says:

I am not a party to the action, am over 18 years of age and I am employed by LAW OFFICES OF ALAN J. WAINTRAUB PLLC, attorneys for the above named plaintiff.

On October 30, 2019, I served a copy of the within Notice of Settlement - by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal service within New York State, addressed to each of the following persons at the last known address set forth after each name:

769 M LLC
Defendant
c/o Secretary of State
99 Washington Avenue
Albany, New York 12231

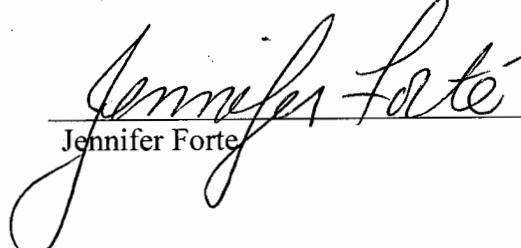
Law Office of Jeffrey Fleischmann PC
Attorneys for Defendant – Joseph Freund
150 Broadway, Suite 900
New York, New York 10038
Attn: Jeffrey Fleischmann, Esq.

Criminal Court of the City of New York
Defendant
25 Beaver Street
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Defendant
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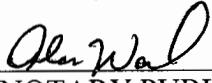
Department of Housing Preservation and Development
Defendant
100 Gold Street
5th Floor
New York, New York 10038

299 Van Buren Investors LLC
Defendant
c/o Harvard Business Services, Inc.
16192 Coastal Highway
Lewis, Delaware 19958



Jennifer Forte

Sworn to before me this
30th day of October, 2019



NOTARY PUBLIC

ALAN JAY WAINTRAUB
Notary Public, State of New York
No. 02WA6303423
Qualified In Rockland County
Commission Expires 05/12/22